

Cristina C. Arguedas (CalBN 87787)
 Email: arguedas@achlaw.com
 Ted W. Cassman (CalBN 98932)
 Email: cassman@achlaw.com
 Raphael M. Goldman (CalBN 229261)
 Email: goldman@achlaw.com
 ARGUEDAS, CASSMAN & HEADLEY, LLP
 803 Hearst Avenue
 Berkeley, CA 94710
 Telephone: (510) 845-3000
 Facsimile: (510) 845-3003

Allen J. Ruby (CalBN 47109)
 Email: allen.ruby@skadden.com
 Jack P. DiCanio (CalBN 138782)
 Email: jack.dicanio@skadden.com
 Patrick Hammon (CalBN 255047)
 Email: patrick.hammon@skadden.com
 SKADDEN, ARPS, SLATE, MEAGHER
 & FLOM LLP
 525 University Avenue, Suite 1100
 Palo Alto, CA 94301
 Telephone: (650) 470-4500
 Facsimile: (650) 470-4570

*Counsel for FedEx Corporation,
 Federal Express Corporation and
 FedEx Corporate Services, Inc.*

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

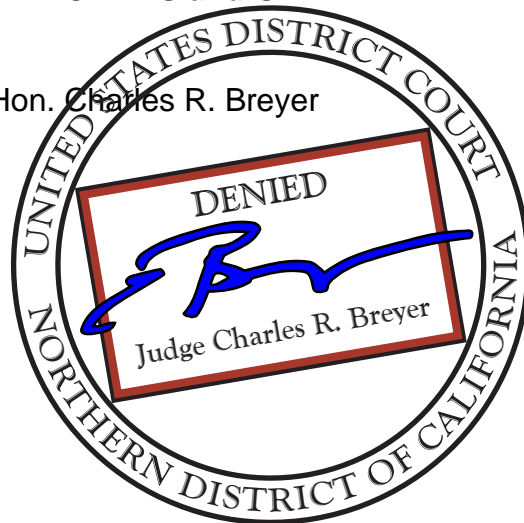
FEDEX CORPORATION, FEDERAL
 EXPRESS CORPORATION, and FEDEX
 CORPORATE SERVICES, INC.,

Defendants.

No. CR 14-380 (CRB)

**FEDEX DEFENDANTS'
 ADMINISTRATIVE MOTION FOR
 LEAVE TO SEEK RECONSIDERATION
 CONCERNING THE VIOLATION OF
 CONSTITUTIONAL FAIR WARNING
 PRINCIPLES and ORDER**

Hon. Charles R. Breyer



1 FedEx Corporation, Federal Express Corporation and FedEx Corporate Services,
2 Inc. (collectively, "FedEx") hereby request leave to seek reconsideration of a Court
3 order.

4 In May 2015, the Court denied FedEx's Motion to Dismiss the Indictment
5 Pursuant to the Common Carrier Exemptions in Title 21 of the United States Code. See
6 Dkt. 87 (Motion); Dkt. 105 (5/14/2015 Hrg Tx). One feature of FedEx's motion was an
7 argument that a conviction under the superseding indictment would offend the Fifth
8 Amendment by imposing a criminal sanction in the absence of fair warning that the
9 charged conduct violated the criminal laws. Dkt. 87 at 35-39. However, the parties did
10 not discuss that ground during oral argument. See Dkt. 105, *passim*.

11 Since the date that FedEx's motion was argued, the Court has asked the parties
12 to brief the question whether there has been "another criminal prosecution in the United
13 States of America of a common carrier which it is recognized is engaged in legitimate
14 business transactions — so it's not just set up for the purpose of delivering drugs — of
15 this type?" Dkt. 122 at 11:11-15; Dkt. 131. The parties responded, see Dkt. 127 & 140,
16 and the Court concluded from these submissions that this prosecution is "unique." Dkt.
17 165 at 8.

18 FedEx acknowledges that this motion does not meet the usual requirements for a
19 civil motion for reconsideration under Civil Local Rule 7-9. Nonetheless, FedEx
20 believes that, given the novelty of the prosecution, and the statutory schemes that
21 govern this case, the matter should not proceed to trial. FedEx had no fair warning
22 under the law that the government would consider the charged conduct to be a violation
23 of the criminal law.

24 Accordingly, FedEx requests leave to file the motion for reconsideration attached
25 hereto as Exhibit A. Should the Court grant this motion for leave to seek
26 reconsideration, FedEx requests that the Court file the attached motion and set a
27 hearing and briefing schedule that is convenient to the Court.
28

Respectfully submitted,

Dated: May 5, 2016

ARGUEDAS, CASSMAN & HEADLEY, LLP

By: _____/s/_____

Raphael M. Goldman
803 Hearst Avenue
Berkeley, CA 94710
(510) 845-3000

Counsel for Federal Express
Corporation, FedEx Corporation and
FedEx Corporate Services, Inc.

ORDER

The FedEx defendants' motion for leave to seek reconsideration is GRANTED.
The motion attached as Exhibit A hereto shall be deemed FILED. The government shall
respond to the motion by _____ and _____ file a reply brief
on or before _____. The matter shall be set for hearing before the Court on
_____ at _____.

IT IS SO ORDERED,

Dated: May 6, 2016

Hon. Charles R. Breyer
United States District Court Judge

